THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.18962 of 1999

29th July 2005

Between:

Vijaya Kumar …Petitioner

AND

Additional Industrial Tribunal-cum-

Additional Labour Court, Hyderabad & others. …Respondents.

ORAL ORDER:

This writ petition is filed seeking a mandamus declaring the order passed in M.P.No.3 of 1997, dated 26-12-1998 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court at Hyderabad rejecting the claim of the petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947 ('the Act' for brevity), as illegal and arbitrary and for a consequential direction to the second respondent to pay the terminal benefits to the petitioner.

It is the case of the petitioner that his services were terminated by an order dated 14-6-1990. Therefore, he filed an appeal under Section 47 of the Shops and Establishments Act. The said Authority, in S.E.No.4 of 1996, passed an order dated 23-10-1993 directing reinstatement of the petitioner into service with continuity of service with all attendant benefits and full back wages. Aggrieved by the same, the management has filed an appeal before the Appellate authority-cum-Deputy Commissioner of Labour duly depositing the back wages. In the said second appeal, the order passed by the original authority was modified converting the entire amount of back wages as compensation in lieu of reinstatement. However, according to the petitioner, he is entitled for gratuity and other benefits. Therefore, he filed a petition

under Section 33-C(2) of the Act before the Additional Industrial Tribunal-cum-Labour Court at Hyderabad and the same was taken on file as M.P.No.3 of 1997. The Labour Court rejected the claim of the petitioner.

I have given earnest consideration to the submissions of the learned counsel on either side and perused the order passed by the Labour Court. Admittedly, the Labour Court rejected the claim of the petitioner only on the ground that no evidence was adduced by the petitioner particularly as to the eligibility of the retrenchment benefits since the order passed by the second appellate authority under the Shops and Establishments Act was not made available, and therefore, held that the petitioner is not entitled for any amounts, and accordingly dismissed the petition. I am of the opinion that once the petitioner has given the facts as to filing of appeal before the primary authority and the management carrying the same in appeal before the appellate authority which attained finality on 24-1-1995, the petitioner could have been given some more time for production of the copies of the said order if necessity was felt by the Court. Of course, it was equally the duty of the petitioner to mark those documents before the Labour Court for the purpose of proper adjudication of the petition under Section 33-C(2) of the Act.

In view of the above, the order passed by the Labour Court is set aside and the matter is remitted back for re-consideration. The same shall be considered by the Labour Court after giving opportunity to both the parties to lead both oral and documentary evidence if necessary and pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No order as to costs.

29th July 2005. (C.V.RAMULU, J.)

ARS